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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIRST APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT TURNER,

Defendant and Appellant.

A091627

(Alameda County  
Super. Ct. No. C132918)

Appellant appeals from the judgment committing him to two years confinement as a sexually violent predator. He contends that the trial court committed error by admitting the transcript of an interview with prior victims and argues that “multiple hearsay” does not fall within any statutory exception to the general hearsay prohibition. He also contends that the admission of these transcribed statements by prior victims prejudicially violated his constitutional rights. We will affirm.

**BACKGROUND**

On May 29, 1998, the District Attorney of Alameda County filed a petition to commit Robert Turner (appellant) as a sexually violent predator (SVP) under the Sexually Violent Predators Act (Welf. & Inst. Code, § 6600 et seq. (Act)).<sup>1</sup> The Act allows such civil commitment proceedings to be brought against sexual offenders who have been previously convicted of sexual crimes. Appellant had admitted sexually abusing three boys aged five, seven, and nine; and he was previously convicted of seven violations of Penal Code section 288 subdivision (a), for lewd conduct with a child under

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<sup>1</sup> Unless otherwise noted, all statutory citations are to the Welfare and Institutions Code.

14. In the subsequent civil proceedings, a jury found that appellant was a SVP. The trial court committed appellant to the custody of the Department of Mental Health for two years. Appellant filed this timely appeal.

The evidence regarding the prior offenses is substantially undisputed. Prior to his commitment, appellant was an active member of North American Man Boy Love Association (NAMBLA), an organization designed to facilitate sexual relations between men and boys. Appellant stated his belief that adults should be permitted to have sexual relations with children. Appellant and other pedophiles arranged meetings with children to foster sexual relationships with them. On a weekend in March of 1989, appellant and a friend placed three boys under ten years of age in “mock jails” made of cardboard boxes. Using the ruse of preventing the boys from using profanity, appellant and his friend forced the boys to place their penises through holes in the boxes. Appellant and his friend then fondled and orally copulated the boys. Prosecution and convictions followed.

Several psychologists interviewed appellant and conducted psychological tests to determine whether appellant was a SVP. Dr. Dawn Starr, an expert in the evaluation of SVPs, determined that appellant was a pedophile, in other words, a person with a deviant sexual interest toward prepubescent children. Appellant admitted to Dr. Starr that he had intense and reoccurring sexual fantasies about prepubescent and adolescent boys. She concluded that appellant’s offenses were predatory and that he is more likely than not to reoffend. Dr. Kent Franks separately interviewed appellant and also diagnosed him as a SVP. He concluded that appellant is a predatory pedophile because he has failed to acknowledge any problem with his behavior and because he has frequently associated with other pedophiles.

The defense expert, Dr. Elaine Finnberg, opined that appellant met two of the criteria of a SVP but that he was not likely to reoffend. She also concluded that appellant did not suffer from personality disorders.

During the trial, the People requested permission to admit a transcript of an interview of the victims and their mother conducted by Inspector Timothy Painter, a prosecution investigator. The transcript was part of the materials made available to the experts who testified. Section 6600 subdivision (a), permits the use of documentary evidence to prove the existence of prior convictions and to provide the details underlying the commission of such offenses in order to show that a defendant is a SVP. The trial court concluded that the transcribed statements made by the victims were admissible and need not be excluded under the relevant sections of the Evidence Code. However, the trial court did not permit Inspector Painter to testify about the victim's responses in the interview and limited the admission to the transcript of the interview.

The jury found that appellant was a SVP and he was placed in psychiatric custody. Appellant's appeal is based on the contention that the Welfare and Institutions Code does not create any exception to the general rule that excludes hearsay. Appellant argues that the alleged error was prejudicial and per se reversible as a violation of his constitutional rights to due process and to confront the witnesses against him.

## **DISCUSSION**

### **I. STANDARD OF REVIEW**

We review purely legal questions de novo, and the admission of hearsay is a question of evidentiary law. (*People v. Duarte* (2000) 24 Cal.4th 603, 618.)

### **II. THE TRIAL COURT PROPERLY ADMITTED EVIDENCE OF STATEMENTS MADE BY PRIOR VICTIMS**

Appellant contends that the express language of section 6600, subdivision (a), permitting admission of hearsay does not extend to hearsay excluded by Evidence Code section 1201. Although appellant must acknowledge that section 6600, subdivision (a) creates a broad exception to the hearsay rule, he argues that the statute was not intended to permit the admission of "multiple" hearsay in documents offered under the exception. Appellant quotes graphic portions of the interview in an apparent attempt to convince us that the prosecutor "exploited" the erroneously admitted evidence, presumably referring

to the potential prejudice inherent in such evidence. However, no issue on appeal has been raised under section 352 of the Evidence Code. We conclude that as a matter of law, the trial court did not commit error by admitting the transcript of statements made by the victims describing the appellant's prior offenses because section 6600, subdivision (a) permits the admission of such evidence.

Under similar circumstances, the court in *People v. Superior Court (Howard)* (1999) 70 Cal.App.4th 136, 154 (*Howard*), held that victim statements contained in probation reports were admissible in SVP proceedings. The *Howard* court held that the inclusion of such hearsay in the documentary evidence offered at a probable cause hearing did not render the evidence inadmissible, because the law was intended to help prosecutors prove charges without bringing victims back to court to relitigate prior convictions. The *Howard* court also relied on the opinion in *In re Parker* (1998) 60 Cal.App.4th 1453, 1468, which held that hearsay was admissible because it was included in psychological evaluations, such as the evaluations offered in this case. (*Howard, supra*, at p. 154.) Hearsay evidence can be admitted to show the basis of an expert's opinion in an SVP case (*People v. Martinez* (2001) 88 Cal.App.4th 465, 486).

Appellant's efforts to distinguish *Howard* from his case are unavailing. The fact that the *Howard* case involved statements made at a probable cause hearing, and later referenced in a probation report, does not prevent the holding in that case from informing us here. The *Howard* opinion permitted hearsay to be used because the plain language of the statute permits admission of a wide variety of hearsay statements. To this conclusion we add our own observation that the SVP act was amended in 1996 to provide a very broad exception to the hearsay rule and does not distinguish between "ordinary" hearsay and "multiple" hearsay (Evid. Code, §§ 1200 & 1201). We see no pertinent distinction between the admission of hearsay, or multiple hearsay, in the form of portions of a preliminary hearing transcript included in a probation report, as in *Howard*, and the admission of the victims' statements in this case. Such statements could have been admitted to show the basis for an expert's evaluation, and could also have been referenced in probation and sentencing reports. In fact, such reports are required by the

California Rules of Court, rule 411.5 (a)(5), to contain hearsay in the form of victim and witness statements. Appellant has not articulated any meaningful distinction between his case and the situations already discussed in the case law.

### **III. THE ADMISSION OF THE EVIDENCE DID NOT VIOLATE APPELLANT’S RIGHT TO DUE PROCESS AND CONFRONTATION**

We also are not persuaded by appellant’s argument that the trial court violated his right to due process by admitting the transcript of the interview. We agree with the *Howard* court’s conclusion that the statute provides that “hearsay evidence [contained in probation reports] is admissible in SVP proceedings without violating the defendant’s constitutional due process rights . . .” largely because due process under the SVP Act is not measured by the rights afforded a defendant in criminal proceedings (70 Cal.App.4th at p. 154.) The civil proceedings permitted by the Act are designed to allow the defendant to challenge such hearsay evidence and to present rebuttal evidence. The Act thus preserves the accused SVP’s constitutional rights under circumstances where a conviction has already occurred, while enabling the People to carry the burden of proof in the SVP proceedings without the trauma of repeated testimony by prior victims.

The admission of this evidence also did not violate appellant’s right to confrontation of witnesses. Appellant has apparently misunderstood the nature of the action against him. SVP proceedings are civil proceedings (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1166) and, unlike in criminal proceedings, the scope of the right of confrontation in civil actions is defined by due process. (*In re Malinda S.* (1990) 51 Cal.3d 368, 383, fn. 16.) Thus, “due process under the SVP Act is not measured by the rights accorded a defendant in criminal proceedings, but by the standard applicable to civil proceedings” and hearsay statements can be admissible in SVP proceedings without violating the strictures of due process, so long as the defendant has the opportunity to challenge them and to present his side of the story. (*Howard*, supra, 70 Cal.App.4th at pp. 154-155.) Appellant had an opportunity to challenge the evidence offered against him at trial.

Finally, we note that if there were any error in the admission of these victims' statements, it was harmless. The evidence of the appellant's prior convictions was indisputable and the expert testimony regarding the findings required to support the jury's conclusion that he is an SVP was more than sufficient. Appellant does not claim that these statements suggested he had committed any offense other than those to which he pleaded guilty and, as we have noted, he has not objected that undue prejudice attended the admission of the statements. Moreover, it appears that the victims' statements that appellant contends were improperly admitted were offered primarily to establish that the nature of the prior offenses was "predatory." This fact need not have been proven in order for the judgment to be affirmed. (*People v. Torres* (2001) 25 Cal.4th 680, 683.)

#### IV. DISPOSITION

The judgment is affirmed.

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Lambden, J.

We concur:

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Kline, P. J.

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Haerle, J.